

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

DEONNE MAGGETTE, ET AL

PLAINTIFFS

V.

**NO. 2:07CV181-M-A
LEAD CASE**

**BL DEVELOPMENT CORP. d/b/a GRAND
CASINO TUNICA; ET AL**

DEFENDANTS

CONSOLIDATED WITH

**McKINLEY JACOBS, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF FANNIE JACOBS, DECEASED; ET AL**

PLAINTIFFS

V.

NO. 2:07CV182-M-A

**BL DEVELOPMENT CORP. d/b/a
GRAND CASINO TUNICA; ET AL.**

DEFENDANTS

ORDER

This cause comes before the court on its own motion addressing the issue of whether Walters Bus Service should be considered a private or common carrier in this case. This distinction is of considerable legal significance, inasmuch as common carriers owe passengers a higher duty of care than private carriers under Arkansas law. Defendant's proposed jury instructions appear to view this as being a fact issue which should be resolved by the jury, but the court regards it as being an issue of law which is more appropriate for resolution by this court. The Arkansas Supreme Court has written that:

A good working definition of common carriers appears in 13 Am.Jur.2d, Carriers, § 2:

A common carrier may be defined, very generally, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by a course of conduct as to the service offered or performed, with the result that he may be held liable for refusal, if there is no valid excuse, to carry for all who apply. The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and he is regarded, in some respects, as a public servant.

Private carriers are defined, *id.*, § 8:

A private carrier is one who, without making it a vocation, or holding himself out to the public as ready to act for all who desire his services, undertakes by special agreement in a particular instance only, to transport property or persons from one place to another either gratuitously or for hire.

Alpha Zeta Chapter of Pi Kappa Alpha Fraternity by Damron v. Sullivan, 293 Ark. 576, 740 S.W.2d 127 (Ark. 1987).

Based upon this authority, it certainly appears that defendant faces an uphill battle in persuading the court that an entity known as “Walters Bus Service,” which was in the business of transporting passengers by bus, should not be considered a common carrier under Arkansas law. In *Alpha Zeta*, the Arkansas Supreme Court concluded that a businessman who provided vehicles for use in a hayride (even though his normal profession was renting construction equipment) should not be considered a common carrier, *id.* at 584, but this is obviously a far cry from the fact scenario in this case. Accordingly, the court tentatively concludes at this juncture that Walters Bus Service was a common carrier, but defendant will have an opportunity at trial to present to the court (outside the presence of the jury) any authority or arguments which suggest otherwise. Unless and until defendant does so, however, the parties should proceed under the assumption that the jury will be instructed that Walters Bus was, in fact, a common carrier in this case.

. **SO ORDERED** this 2nd day of June, 2011.

/s/ Michael P. Mills
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI